IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

:JUDGMENT:

AMOD KUMAR SAXENA Vs. THE STATE OF RAJ. & ANR

D.B. Civil Special Appeal (W) No.309 of 2004 under Section 18 of the Rajasthan High Court Ordinance, 1949 against the judgment dated 24.8.2001 passed in S. B. civil Writ Petition No.4500/2001.

Date of Judgment: 13.10.2006

PRESENT

Hon'ble Mrs. Gyan Sudha Misra,J.
Hon'ble Dr. Vineet Kothari, J.

Mr. Manish Bhandari, for the appellant.
Mr. Praveen Balwada, for the respondent.

Reportable

By the Court:

This appeal has been preferred against the order of the learned Single Judge who had been pleased to reject the writ petition which had been filed by the petitioner/appellant herein for quashing and setting aside the order dated 15.6.2001 by which reference initiated at the instance of the petitioner for referring the dispute to the Industrial/Labour Tribunal was rejected as it could be noticed that there was no prima facie dispute in between the petitioner/appellant herein and the respondent-State.

On scrutiny of the facts in regard to the dispute raised by the petitioner/appellant herein, it could be traced out that the petitioner/appellant herein submitted an application seeking voluntary retirement which was also signed by two witnesses and the

application was accepted by the respondent No.2, the Divisional Joint Labour Commissioner, Ajmer after which all monetory benefits to which the petitioner/appellant herein was entitled were also paid to him. It could be further noticed that at the time of voluntary retirement, a sum of Rs.7,70,280/- was paid to the petitioner/ appellant herein towards his retiral benefit which he had duly accepted. Thereafter, he raised a dispute by initiating a reference before the State Government that he had been pressurised to seek voluntary retirement and this was the dispute which should have been referred for adjudication to the Industrial/Labour Tribunal.

Since the State Government, prima facie, did not find any dispute in regard to the voluntary retirement sought by the petitioner/appellant herein, his application was rejected which he challenged before the learned Single Judge. The learned Single Judge noticed that in absence of any dispute between the appellant and the respondent, the reference was rightly rejected by the State Government.

Assailing the aforesaid judgment and order of the learned Single Judge, it was contended by learned counsel for the appellant that the appellant had not sought retirement voluntarily but he was pressurised into seeking the same and, therefore, this was the dispute which should have been referred for adjudication before the Industrial/Labour Tribunal.

We find no substance in this argument for if the appellant's version were correct, it is difficult to comprehend as to why he had accepted the entire amount which accrued towards his retiral benefits. Besides this, if he was pressurised into seeking voluntary retirement, it was open for him to challenge the action of the respondent at the appropriate time before the appropriate forum including a writ petition before the High court against pressurisation to seek voluntary retirement. Having accepted the retiral benefit by the appellant, a reasonable inference can certainly be drawn that he had sought voluntary retirement of his own accord and cannot be held to have been pressurised by the respondent.

It was also submitted by the counsel for the appellant that the State Government, at the time of initiation of reference, is not required to enter into the adjudication of factual dispute as that was the function of the Tribunal when the matter is finally referred for adjudication. While it is an acknowledged legal position that the evidence in regard to dispute has to be appreciated by the Tribunal to which the dispute is referred, the fact remains that the State, while considering the question as to whether the dispute is fit to be referred to the tribunal for adjudication or not, it had to consider the same in the light of the existing facts and documentary evidence and it is surely open for

the State Government to prima facie consider whether a dispute for reference exists or not. In the event of existence of a dispute, the same obviously has to be referred to the Tribunal where the evidence led by the contesting parties can be scrutinized and appreciated. The contention to the effect that it is not open to examine even prima facie as to whether a dispute in fact is existing or not and that it should not be considered at all by the State, is fit to be rejected as the reference of dispute cannot be construed to be a mechanical process. The existence of a dispute obviously has to be considered in the light of the existing facts and an opinion in that regard has to be formed by the competent authority while referring a dispute to the Tribunal and thus reference of a dispute cannot be treated as a mechanical action on the part of the State authority. In view of this, if the respondent-State examined the facts in regard to the case of the petitioner/appellant herein who had sought voluntary retirement and had also accepted the entire retiral benefit after his retirement which is final, it is surely not open to challenge the same by initiating a reference for its adjudication.

The appeal, thus, has no substance and hence it is dismissed at the admission stage itself.

[**Dr. Vineet Kothari**],**J.** [**Gyan Sudha Misra**],**J.**

/skm/